



## RMB APPROVED RISK PROVISIONS FOR CONSTRUCTION MANAGER AT RISK CONTROLLED CONSTRUCTION PROJECTS UNDER \$5MM

### Instructions for use:

1. The following insurance, contract security and indemnity risk provisions (published October 2023) are **blanket approved** by the Risk Management Branch (RMB) for use with CCDC 5B – 2010 Contracts for Health Care Agency (HCA) projects insured by the Construction Manager with an estimated construction value of less than Five Million Dollars (\$5,000,000). Blanket approval means you do not need to submit the agreement for approval each time it is used providing the indemnity language is unchanged.
2. Copy the RMB approved risk provisions found below in **blue text** including the provisions related to “Appendix Stipulated Price Option”. Note if you do not transition to a STIP contract these provisions will become immaterial.
3. Paste the **blue text unchanged** into a document titled **Supplementary Conditions**. Often, the RMB approved risk provisions may be the only supplementary conditions. The HCA is permitted to add other supplementary conditions provided they do not impact the indemnity language. Example: Adding a supervision clause does not impact the indemnity language or blanket approval.
4. Confirm the Supplementary Conditions are listed as a contract document under Article A-4 in the CCDC5B.
5. Ensure the RPF includes the CCDC 5B draft and the Supplementary Conditions (inclusive of the RMB approved risk provisions).

\*\*\*If the RMB risk provisions are changed or if new owner/HCA granted indemnities are added to the supplementary conditions, submit the contract to HCPP for review/approval. \*\*\*

### MODIFICATIONS TO GENERAL CONDITIONS

**GC 11.1 INSURANCE**, delete entirely and replace with the following:

#### **GC 11.1 – INSURANCE**

Without restricting the generality of GC 12.1—INDEMNIFICATION, insurance and coverage will be arranged and paid for as under-noted:

11.1.1 **The Construction Manager shall, without limiting its obligations or liabilities herein and at its own expense, provide and maintain the following insurances with insurers licensed in British Columbia and in forms and amounts acceptable to the Owner:**

- (a) **Commercial General Liability Insurance** with a limit of not less than FIVE MILLION DOLLARS (\$5,000,000), inclusive per occurrence against bodily injury and property damage, and the Owner is to be added as an additional insured and include a cross liability clause. This insurance shall be primary and not require the sharing of any loss by an insurer of the Owner. Such

insurance shall include, but not be limited to:

- .01 Premises and Operations Liability;
- .02 Products and Completed Operations Liability (24 months);
- .03 Contractual Liability;
- .04 Contingent Employer's Liability;
- .05 Personal Injury Liability;
- .06 Non-Owned Automobile;
- .07 Employees as Additional Insureds;
- .08 Broad Form Property Damage;
- .09 Elevator and Hoist Liability
- .10 Operation of Attached Machinery

**and where such further risk exists:**

- .11 Shoring, Blasting, Excavating, Underpinning, Demolition, Piledriving, Subsurface and Grading, as applicable;
- .12 Limited Pollution Liability (TWO MILLION DOLLARS (\$2,000,000))
- .13 Broad Form Tenants Legal Liability (ONE MILLION DOLLARS (\$1,000,000))
- .14 Forest Fire Fighting Expenses (ONE MILLION DOLLARS (\$1,000,000))

The insurance shall be maintained continuously from commencement of the *Services* (including *Temporary Work*) and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant* in consultation with the *Construction Manager* and the *Owner*.

- (b) **Automobile Liability Insurance** in respect of all owned or leased vehicles if used directly or indirectly in the performance of the *Services* and *Project*, subject to limits of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence. The insurance shall be maintained continuously from commencement of the *Services* (including *Temporary Work*) and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is so confirmed in writing by the *Consultant* in consultation with the *Construction Manager* and the *Owner*.
- (c) **Owned or Non-Owned Aircraft (including Unmanned Aircraft Vehicles) Liability Insurance** if used directly or indirectly in the performance of the *Work*, subject to limits not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and including aircraft passenger hazard where applicable. The insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the work involving aircraft (including unmanned aircraft vehicles) until such work is completed.
- (d) **Owned or Non-Owned Watercraft Liability Insurance** if used directly or indirectly in the performance of the *Work*, subject to limits of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof. The insurance will name the *Owner* as an additional insured and include a cross liability clause. This insurance shall be maintained continuously from commencement of the work involving watercraft until such work is completed.
- (e) **Contractors Pollution Liability Insurance**, where the *Construction Manager's* performance or the *Subcontractor's* performance of the *Work* is associated with hazardous materials clean up, removal and/or containment, transit or disposal. This insurance must have a limit of liability not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence insuring against bodily injury, death, and damage to property including loss of use thereof.

Any insurance required under this clause 11.1.1 (e) must name the *Owner* as an additional insured, but only with respect to liability arising out of the *Construction Manager* or the *Subcontractor's* performance of the *Work*. Such insurance must include sudden and accidental and gradual pollution events for third party liability including ongoing and completed operations and shall not be impaired by any, biological contaminants (without limitation, mould and bacteria), asbestos, or lead exclusions. Any 'insured vs. insured' exclusion shall not prejudice coverage for the *Owner* and shall not affect the *Owner's* ability to bring suit against the *Construction Manager* as a third party.

This insurance shall be maintained continuously from commencement of the work involving hazardous materials clean-up, removal and/or containment, transit and disposal until such work is completed and including a twenty-four (24) month extended reporting period if any such insurance is provided on a claims-made basis.

**(f) Hot Roofing or Installation of Hot Membranes**

If the project is a renovation involving hot roofing work or installation of hot membranes, the contractor will provide, maintain and pay for a liability policy insuring hot roofing or installation of hot membrane operations with a limit of not less than TWO MILLION DOLLARS (\$2,000,000) inclusive per occurrence against bodily injury and property damage. This insurance will name the *Owner* as an additional insured and include a cross liability clause. Such insurance shall include, but not be limited to:

- .01 Premises and Operations Liability;
- .02 Products and Completed Operations;
- .03 Owner's and Contractor's Protective Liability;
- .04 Contractual Liability;
- .05 Contingent Employer's Liability;
- .06 Personal Injury Liability;
- .07 Non-Owned Automobile Liability;
- .08 Cross Liability;
- .09 Employees as Additional Insureds; and
- .10 Broad Form Property Damage.

This insurance shall be maintained continuously from commencement of hot roofing or installation of hot membrane work until such work is completed.

**(g) Property Insurance** which shall cover, on a replacement cost basis, all property, of every description, to be used in the construction of the *Work*, against "All Risks" of physical loss or damage, including earthquake and flood, while such property is being transported to the site, and thereafter throughout erection, installation and testing. This insurance shall be maintained continuously from commencement of the *Work* and kept in force until the *Project* is ready for use or is being used for the purpose intended, whichever occurs first, and is confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*. Such insurance shall extend to protect the interest of the *Owner* and shall contain a waiver of subrogation against the *Owner*.

- 11.1.2 The insurance required under clause 11.1.1 (a), (c), (d), (e), (f) and (g) must be endorsed to provide the *Owner* with 30 days' advance written notice of cancellation.
- 11.1.3 As may be applicable, the *Construction Manager* must cause all *Subcontractors* to comply with the insurance requirements outlined in clause 11.1.1 (a), (b), (c), (d), (e), (f) and (g).
- 11.1.4 The *Construction Manager* shall provide, maintain and pay for any additional insurance which they are required to provide by law or which they consider necessary.

- 11.1.5 All the foregoing insurance shall be primary and not require the sharing of any loss by any insurer of the *Owner*.
- 11.1.6 The *Construction Manager* shall provide the *Owner* with proof of insurance for those insurances required to be provided by the *Construction Manager* prior to the commencement of the *Services* and *Project* as applicable in the form of a completed certificate of insurance and will also provide a certified copy of any required policies upon request.
- 11.1.7 The *Owner* shall not be responsible for injury to the *Construction Manager's* employees or for loss or damage to the *Construction Manager's* or to the *Construction Manager's* employees' machinery, equipment, tools or supplies which may be temporarily used or stored in, on or about the project site during construction and which may, from time to time, or at the termination of this *Contract* be removed from the project site. The *Construction Manager* hereby waives all rights of recourse against the *Owner* with regard to damage to the *Construction Manager's* property.
- 11.1.8 If the *Construction Manager* fails to provide, maintain and pay for insurance as required by this schedule, other than automobile liability insurance, the *Owner* may obtain and pay for the required insurance, the cost of which will be payable on demand by the *Owner*. The *Owner* may offset such amounts from any monies due to the *Construction Manager* if not paid within 15 days.

**GC 11.2 CONTRACT SECURITY (for projects of One Hundred Fifty Thousand (\$150,000) or greater),** delete entirely and replace with the following:

**GC 11.2 – CONTRACT SECURITY**

- 11.2.1 The *Construction Manager* shall, prior to the commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security required by this *Contract* as in accordance with paragraph 7.1.13 of the Agreement A-7 – COST OF THE WORK.
- 11.2.2 The *Construction Manager* shall prior to the commencement of the *Work* furnish performance and labour and material payment bonds within fourteen (14) days of the date of this *Contract*. Each bond must be in a sum equal to 50% of the total estimated *Price of Work*. The bonds must be issued on the latest CCDC-221 or CCDC-222 approved forms or other such forms approved by the Surety Association of Canada and issued by a surety company registered in the Province of BC or another surety company acceptable to the *Owner*. The *Construction Manager* must maintain bonds in good standing until fulfilment of the *Contract*.

**GC 12.1 INDEMNIFICATION,** delete GC 12.1.1 - 12.1.2 and replace with the following:

**GC 12.1 – INDEMNIFICATION**

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, and excepting always losses caused or contributed by the acts of the party for whom indemnification is sought, the *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this contract, provided such claims are:
- .1 caused by:
- (1) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
  - (2) a failure of the party to the Contract from whom indemnification is sought to fulfill its terms or conditions; and

- .2 made by Notice in Writing within such periods as prescribed by the Limitation Act of the Province of British Columbia.

12.1.2 The obligation of either party to indemnify as set forth in paragraph 11.1.1 shall be limited as follows:

- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which Insurance is to be provided by the *Construction Manager* pursuant to GC 11.1 - INSURANCE, the limit of:
  - (1) Commercial General Liability coverage – GC 11.1.1 (a); or
  - (2) Property Insurance – GC 11.1.1 (g)whichever is pertinent to the loss.
- .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of:
  - (1) the *Construction Manager's* compensation as recorded in Article A-5 – COMPENSATION FOR SERVICES or;
  - (2) TWO MILLION DOLLARS (\$2,000,000.00),but in no event shall the sum be greater than TWENTY MILLION DOLLARS (\$20,000,000.00).
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

## APPENDIX – STIPULATED PRICE OPTION

### MODIFICATIONS TO GENERAL CONDITIONS

**GC 11.2 CONTRACT SECURITY**, delete entirely and replace with the following:

#### GC 11.2 – CONTRACT SECURITY

- 11.2.1 The *Construction Manager* shall, prior to the commencement of the *Work* or within the specified time, provide to the *Owner* any contract security required by this *Contract*.
- 11.2.2 The *Construction Manager* shall prior to the commencement of the *Work* furnish performance and labour and material payment bonds within fourteen (14) days of the date of this *Contract*. Each bond must be in a sum equal to 50% of the total estimated *Price of Work*. The bonds must be issued on the latest CCDC-221 or CCDC-222 approved forms or other such forms approved by the Surety Association of Canada and issued by a surety company registered in the Province of BC or another surety company acceptable to the *Owner*. The *Construction Manager* must maintain bonds in good standing until fulfilment of the *Contract*.

**GC 12.1 INDEMNIFICATION**, delete **GC 12.1.1** and **12.1.2** and replace with the following:

#### GC 12.1 – INDEMNIFICATION

- 12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, and excepting always losses caused or contributed by the acts of the party for whom indemnification is sought, the *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings

whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:

.1 caused by:

- (1) the acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
- (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

.2 made by *Notice in Writing* within such periods as prescribed by the Limitation Act of the Province of British Columbia.

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

.1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which Insurance is to be provided by the *Construction Manager* pursuant to GC 11.1 - INSURANCE, the limit of:

- (3) Commercial General Liability coverage – GC 11.1.1 (a); or
- (4) Property Insurance – GC 11.1.1 (g)

whichever is pertinent to the loss.

.2 In respect of losses suffered by the *Owner* and *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of:

- (1) the final *Price of Work* as confirmed in the final certificate of payment or;
- (2) TWO MILLION DOLLARS (\$2,000,000),

but in no event shall the sum be greater than TWENTY MILLION DOLLARS (\$20,000,000).

.3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.